IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.2217 of 2005

Mr.Suresh Bhaguji Nangare & anr. Petitioners

Vs.

Smt.Kamal Ramchandra Farande & ors. Respondents

Mr.S.N.Chandrachud for petitioners.

Mr.R.S.Kadapkar h/f.Mr.R.G.Ketkar for resp.nos.1 to 4.

CORAM: B.H.MARLAPALLE,J.

June 21, 2006.

P.C.

1. Heard Mr.Chandrachud, the learned counsel for the petitioners who appear to be determined to frustrate the award passed by the Motor Accident Claims Tribunal, Satara in Motor Accident Claim No.243 of 1987 by taking support of the legal intricacies.

2. The award dated 2/1/1985 still remains to be satisfied by the petitioners and the claimants ultimately were forced to file execution proceedings i.e. Darkhast No.10 of 1996 which was originally filed in the Court at Satara and subsequently transferred to the Court at Pune as the properties of

the present petitioners and sought to be attached are located at Pune. The petitioners had moved an application at Exhibit 12 in Darkhast No.10 of 1996 to call back the attachment warrant passed below Exhibit 1 so as to attach the property. This application came to be rejected by the learned Addl. Member of the MACT, Pune on 18/2/2005 and hence this petition.

3. The operative part of the award dated 2/1/1985 reads as under:

> (1) Respondents 1A to 1C and Respondent No.2 do pay to petitioners compensation of Rs.1,90,000/- (Rs. One lac ninety thousand only) inclusive of no fault liability claim.
>
> (2) Respondents 1A to 1C and Respondent No.2 do pay to petitioners, interest on the above amount, at 12% per annum from 1/8/1988 till realization.
>
> (3) Respondents 1A to 1C and Respondent No.2 pay to petitioners proportionate costs of this litigation and bear their own.

(4) An amount of Rs.4272.50 to be recovered and attributed to court fee stamp payable by the petitioner and then only balance mount to be paid to the petitioner.

(5) An award be made accordingly which will be executable only against property of deceased Respondent No.1 that has come to Respondent Nos.1A to 1C as far as these Respondents are concerned.

4. Mr.Chandrachud, the learned counsel for the petitioners, who were respondent nos.1A to 1C in the award dated 2/1/1985, submitted that clause (5) of the award as quoted above clearly shows that it could be executed only against the property inherited by the said respondents from the original respondent no.1 and the said original respondent no.1 has not left any property behind him for inheritance. It was submitted that all the properties possessed by respondent no.1 were either sold or gifted to respondent nos.1A to 1C much prior to the date of accident in MAC No.243 of 1987. In short his submissions are that the award dated 2/1/1985 cannot

be executed.

5. The award has to be read in totality and the first part of the award is very specific in asmuchas the respondent nos.1A to 1C and respondent no.2 are required to pay by way of compensation of Rs.1,90,000/- with 12 % interest per annum from 1/8/1988 till realizations and the costs of the litigation.

6. If the respondent nos.1A to 1C and respondent no.2 for any reason failed to satisfy the claim as ordered against them, the execution proceedings have been clarified in clause no.5. The present petitioners were impleaded as respondent nos.1B and 1C in the award dated 2/1/1985 along with their mother Sonabai as Respondent No.1A on the demise of their father, the original respondent no.1 and they were very much before the Motor Accident Claims Tribunal as necessary parties. They are required to satisfy the award and they have not challenged the award at any time during the last more than 21 years. It is not that they do not own any property and they appear to be hell bent on frustrating the award by taking support of clause (5) as reproduced

hereinabove claiming that the respondent no.1 did not leave behind any property which could be inherited by them. Admittedly the original respondent no.1A is no more and the present petitioners are her heirs. Taking into consideration these totalities, there is no reason to disturb the impugned order dated 18/2/2005 and it appears that the said order was not stayed by this Court during the last more than about one and half years. If the petitioners had obeyed the award as per the directions in clauses (1) to (3) above, there would not be any occasion for the original claimants to file Darkahst No.10 of 1996 and they were virtually driven to file the same because of the petitioners determination not to obey the award. The petitioners' behaviour need to be deprecated and they do not deserve any sympathetic consideration.

7. The petition is rejected under the supervisory powers of this Court under Article 227 of the Constitution and in case the petitioners want to save the property being attached as per the directions given in the impugned order, they have the option to deposit the claim amount with the Execution Court within a period of four weeks from today.

8. Mr.Chandrachud submitted an oral application for stay of this order. The oral application is rejected.

(B.H.MARLAPALLE,J.)